House of Representatives

General Assembly

File No. 96

February Session, 2012

Substitute House Bill No. 5107

House of Representatives, March 26, 2012

The Committee on Insurance and Real Estate reported through REP. MEGNA of the 97th Dist., Chairperson of the Committee on the part of the House, that the substitute bill ought to pass.

AN ACT CONCERNING CAPTIVE INSURANCE COMPANIES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. Section 38a-91nn of the 2012 supplement to the general statutes, as amended by section 66 of public act 11-1 of the October special session, is repealed and the following is substituted in lieu thereof (*Effective July 1, 2012, and applicable to calendar years commencing on or after January 1, 2012*):

(a) Each captive insurance company shall pay to the Commissioner of Revenue Services, on or before March first of each year, a tax at the rate of (1) thirty-eight hundredths of one per cent on the first twenty million dollars, (2) two hundred eighty-five thousandths of one per cent on the next twenty million dollars, (3) nineteen hundredths of one per cent on the next twenty million dollars, and (4) seventy-two thousandths of one per cent on each dollar thereafter, on the direct premiums collected or contracted for on policies or contracts of insurance written by the captive insurance company during the year ending December thirty-first next preceding, after deducting from the direct premiums subject to the tax the amounts paid to policyholders as return premiums which shall include dividends on unabsorbed premiums or premium deposits returned or credited to policyholders, except that no tax shall be due or payable as to considerations received for annuity contracts.

(b) Each captive insurance company shall pay to the Commissioner of Revenue Services, in the month of March of each year, a tax at the rate of (1) two hundred fourteen thousandths of one per cent on the first twenty million dollars, (2) one hundred forty-three thousandths of one per cent on the next twenty million dollars, (3) forty-eight thousandths of one per cent on the next twenty million dollars, and (4) twenty-four thousandths of one per cent on each dollar thereafter, on assumed reinsurance premiums collected or contracted for on policies or contracts of insurance written by the captive insurance company during the year ending December thirty-first next preceding, provided no tax under this subsection shall apply to premiums for risks or portions of risks that are subject to taxation on a direct basis pursuant to subsection (a) of this section. No tax under this subsection shall be payable in connection with the receipt of assets in exchange for the assumption by a captive insurance company of loss reserves and other liabilities of another insurer under common ownership and control, if such transaction is part of a plan to discontinue the operations of such other insurer and if the intent of the parties to such transaction is to renew or maintain such business with the captive insurance company.

(c) (1) The annual minimum aggregate tax to be paid by a captive insurance company, other than a sponsored captive insurance company, calculated under subsection (a) of this section shall be seven thousand five hundred dollars, and the annual maximum aggregate tax calculated under subsections (a) and (b) of this section shall be two hundred thousand dollars. In the case of a branch captive insurance company, the annual aggregate tax to be paid by such company shall apply only to the branch business of such company.

(2) In the case of a sponsored captive insurance company, the

annual minimum aggregate tax to be paid by a sponsored captive insurance company shall be seven thousand five hundred dollars and shall apply to such company as a whole and not to each protected cell. The annual maximum tax to be paid by a sponsored captive insurance company shall be the aggregate tax liability, calculated under subsection (a) of this section, of each protected cell.

(d) The provisions of sections 12-204, 12-204d, 12-204g and 12-205 to 12-208, inclusive, shall apply to the provisions of sections 38a-91aa to 38a-91tt, inclusive, in the same manner and with the same force and effect as if the language of said sections 12-204, 12-204d, 12-204g and 12-205 to 12-208, inclusive, had been incorporated in full into this section and had expressly referred to the tax due under this section, except to the extent that any such language is inconsistent with a provision of said sections 38a-91aa to 38a-91tt, inclusive.

(e) (1) Except as specified in subsection (c) of this section and subdivision (2) of this subsection, two or more captive insurance companies under common ownership and control shall be taxed as though they were a single captive insurance company.

(2) Special purpose financial captive insurance companies shall not be consolidated with other captive insurance companies that are not special purpose financial captive insurance companies for purposes of calculating the tax due under this section.

(f) For the purposes of this section, (1) "common ownership and control" means ownership and control of two or more captive insurance companies by the same person or group of persons, and (2) "ownership and control" means:

(A) In the case of stock insurers, the direct or indirect ownership of eighty per cent or more of the outstanding voting stock of the insurer;

(B) In the case of mutual or nonprofit corporations, the direct or indirect ownership of eighty per cent or more of the surplus and the voting power of the corporation;

(C) In the case of limited liability companies, the direct or indirect ownership of eighty per cent or more of the membership interests in the company; and

(D) In the case of sponsored captive insurance companies, a protected cell shall be treated as a separate captive insurance company owned and controlled by the protected cell's participants.

(g) (1) The tax provided for in this section shall constitute all taxes collectible under the laws of this state from any captive insurance company, and no other occupation tax or other taxes shall be levied or collected from any captive insurance company by the state or any county, city or municipality within this state, except sales and use taxes and ad valorem taxes on real and personal property used in the production of income.

(2) The tax provided for in this section shall be calculated on an annual basis, notwithstanding policies or contracts of insurance or contracts of reinsurance issued on a multiyear basis. In the case of multiyear policies or contracts, the premium shall be prorated for purposes of determining the tax under this section.

(3) A captive insurance company may claim a nonrefundable tax credit of seven thousand five hundred dollars against the aggregate tax imposed under this section for the first calendar year on or after January 1, 2012, in which the company has liability under this section. The Commissioner of Revenue Services shall prescribe the form and manner in which such tax credit may be claimed.

[(h) (1) There is established an account to be known as the "captive insurance regulatory and supervision account" which shall be a separate, nonlapsing account within the Insurance Fund established under section 38a-52a. The account shall contain any moneys required by law to be deposited in the account. Moneys in the account shall be expended by the commissioner for the purposes of funding staff positions and other reasonable expenses related to the regulation of captive insurance companies.**]**

[(2) (A)] <u>(h) (1)</u> All fees and assessments relating to captive insurance companies received by the Insurance Department shall be deposited in the [account] <u>Insurance Fund established pursuant to section 38a-52a</u>. [(B)] The Comptroller shall transfer annually to [the account] <u>said fund</u> eleven per cent of the tax collected pursuant to this section.

[(3)] <u>(2)</u> The Comptroller may transfer from the [account] <u>Insurance Department's available appropriation</u>, with the approval of the Secretary of the Office of Policy and Management, an amount equivalent to not more than two per cent of the tax collected pursuant to this section, to the Department of Economic and Community Development for reasonable expenses incurred to promote the captive insurance industry in this state. The Department of Economic and Community Development may also utilize the transferred moneys to collaborate with other entities to promote the captive insurance industry in this state.

[(4)] <u>(3)</u> No payment for the maintenance of staff or associated expenses, including contractual services as necessary, shall be disbursed until the commissioner receives proper documentation regarding services rendered and expenses incurred. The commissioner shall establish the form and manner of such documentation.

[(5) Any balance remaining in the account at the end of any fiscal year shall be carried forward in the account for the fiscal year next succeeding.]

Sec. 2. Section 38a-91oo of the 2012 supplement to the general statutes, as amended by section 67 of public act 11-1 of the October special session, is repealed and the following is substituted in lieu thereof (*Effective July 1, 2012*):

Unless otherwise provided in sections 38a-91aa to 38a-91tt, inclusive, no provision of this title shall apply to captive insurance companies, unless expressly included therein, except for the following: <u>(1)</u> Sections 38a-8, 38a-16, 38a-17, 38a-54 to 38a-57, inclusive, 38a-59, 38a-69a, [38a-73,] 38a-129 to 38a-140, inclusive, and 38a-250 to 38a-266, inclusive, and chapter 704c; and (2) section 38a-73, which shall apply only to captive insurance companies formed as risk retention groups, as defined in section 38a-91aa.

This act shall take effect as follows and shall amend the following sections:		
Section 1	*July 1, 2012, and applicable to calendar years commencing on or after January 1, 2012*	38a-91nn
Sec. 2	*July 1, 2012*	38a-91oo

CE *Joint Favorable C/R* INS

INS *Joint Favorable Subst.*

OFA Fiscal Note

State Impact: None

Municipal Impact: None

Explanation

The bill eliminates an account within the Insurance Fund related to fees and assessments for captive insurance companies. In its place, all such fees and assessments are deposited directly into the Insurance Fund. As the bill does not change the amounts of fees and assessments, nor the use of these funds, there is no fiscal impact.

The Out Years

State Impact: None

Municipal Impact: None

OLR Bill Analysis
sHB 5107

AN ACT CONCERNING CAPTIVE INSURANCE COMPANIES.

SUMMARY:

PA 11-1, October Special Session, revised and expanded the laws governing captive insurance companies (i.e., captives), which are wholly owned subsidiaries of other companies that formed the captives to insure all or part of the other companies' risks. It created a separate, nonlapsing captive insurance regulatory and supervisory account for depositing Insurance Department fees and assessments related to captives and 11% of captive premium taxes.

This bill eliminates the account, requires the revenue to be deposited in the Insurance Fund instead, and makes conforming technical changes. It also limits the statutory limits on captives' risks to risk retention groups, a type of captive insurer formed under the federal Products Liability Risk Retention Act, instead of all captives.

EFFECTIVE DATE: July 1, 2012, with the provisions eliminating the captive insurance regulatory and supervision account applying to calendar years beginning on or after January 1, 2012.

COMMITTEE ACTION

Commerce Committee

Joint Favorable Change of Reference

Yea	16	Nay	0	(03/01/2012)

Insurance and Real Estate Committee

Joint Favorable Substitute

Yea	19	Nay	0	(03/13/2012)